

DEC 23 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992	)	
	)	
Cable Home Wiring	)	

**COMMENTS OF U S WEST, INC.**

U S WEST, Inc. ("U S WEST") herein submits its comments concerning the Federal Communications Commission's ("Commission") Second Further Notice of Proposed Rulemaking in the above-captioned matter.<sup>1</sup> U S WEST provides a variety of cable and telecommunications services to subscribers across the United States through its two main subsidiaries, U S WEST Media Group, Inc. ("U S WEST Media Group") and U S WEST Communications Group, Inc. ("U S WEST Communications Group").<sup>2</sup>

<sup>1</sup>In the Matter of Telecommunications Services Inside Wiring Customer Premises Equipment, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, CS Docket No. 95-184, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-376, rel. Oct. 17, 1997 ("SFNPRM").

<sup>2</sup> U S WEST recently announced that pending regulatory and shareholder approval it will split into two separate companies in 1998. U S WEST's domestic cable and

## I. INTRODUCTION AND SUMMARY

In this SFNPRM the Commission proposes to place additional regulatory restrictions on the video programming marketplace, specifically on the private contractual rights of multiple dwelling unit (“MDU”) owners and multichannel video programming distributors (“MVPD”). Although the Commission’s ostensible goal in this proceeding is to provide additional competition in the video marketplace, the proposed restrictions on MDU contracts simply add an additional layer of regulatory restrictions on a part of that market that is already highly competitive. This additional layer of regulation is unnecessary and improper. The Commission should avoid imposing regulatory burdens where a competitive market has already been established and is reasonably well-functioning.

In these comments to the SFNPRM, U S WEST raises the following points in response to the Commission’s proposals:

- The Commission should not impose artificial restrictions on the private contractual rights of MDU owners and MVPDs. The Commission lacks the statutory authority which would allow it to impose the proposed “cap” on exclusive agreements.
- State and local jurisdictions should be allowed to establish the access rights granted competing MVPDs. Right-to-access statutes actually provide MDU tenants with a choice of video programming providers.
- The Commission does not need to cap the term of any MDU agreements. A “fresh look” for privately-negotiated contracts is unnecessary.

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international operations, currently U S WEST Media Group, Inc. will become MediaOne Group, Inc. U S WEST’s regional telephone company, currently U S WEST Communications, Inc. will become the new U S WEST, Inc.

- The Commission should apply its cable home wiring rules to all MVPDs equally. Competition in the marketplace is enhanced by the equal treatment of all MVPD competitors.
- The sharing of homerun wiring is neither desirable nor technically feasible at this time.

Instead of simply imposing more regulations, the Commission should turn its focus in this proceeding back to its original purpose -- enhancing competition by reviewing and streamlining regulations which artificially impede full competition among the various providers in the marketplace. Additional regulatory controls and restrictions will only serve to distort the natural operation of an already competitive market. Imposing arbitrary limits on the private contractual rights of MDU owners and MVPDs is unnecessary and unwarranted. The Commission should refrain from doing so in this proceeding.

## II. U S WEST OPPOSES THE COMMISSION'S IMPOSITION OF A TERM CAP ON PRIVATELY-NEGOTIATED CONTRACTS

The Commission seeks comment on a proposal to "cap" the length of exclusive MDU service agreements. In the SFNPRM, the Commission suggests a period of seven years. U S WEST opposes the artificial imposition of term caps on privately-negotiated contracts for video programming service. The marketplace for providing MDUs with cable and other programming services is already highly competitive. Many different providers currently compete for the right to provide service to MDU premises. These MVPDs include: cable operators (both incumbents and overbuilders), SMATV providers, direct broadcast satellite ("DBS") companies, wireless cable ("MMDS") providers, and more recently, open video system ("OVS")

providers. No additional benefits to the marketplace will be derived by the Commission capping the term of privately-negotiated service agreements.

Not only are there no marketplace benefits, there is also no authority under which the Commission can lawfully implement such restrictions. The Commission does not propose a statutory or other basis for its imposition of a term cap on video provider service agreements and seeks comment on its authority to do so.

U S WEST believes that the Commission would in fact exceed its jurisdiction and statutory authority were it to interject an artificial restriction on the ability of MDU owners and MVPDs to enter into private contracts. While the Commission's jurisdiction over the disposition of homerun wiring in the Further Notice of Proposed Rulemaking was debatable,<sup>3</sup> its authority to impose limitations on the private contracts of service providers and MDU owners is clearly outside of the boundaries established by Congress in the Cable Act of 1984.<sup>4</sup>

In the previous proceeding, the Commission declined to mandate right-of-access to MDU properties after receiving a significant number of negative comments from property managers and building owners, many of whom cited Loretto v. Teleprompter Manhattan CATV Corp.<sup>5</sup> as controlling. The Commission was concerned about the impact on private property rights of MDU owners by mandating a federal right-of-access. In the current proceeding the Commission needs to be concerned about the impact on private contractual rights of MDU

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<sup>3</sup> Further Notice of Proposed Rulemaking, 12 FCC Rcd. 13592 (1997).

<sup>4</sup> 47 U.S.C. § 521.

<sup>5</sup> Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

owners and MVPDs. The Commission's jurisdiction clearly does not allow it to impose restrictions on private agreements for access to private property by mandating a term cap on exclusive access and service contracts.

### III. STATE AND LOCAL JURISDICTIONS SHOULD BE ALLOWED TO ESTABLISH THE ACCESS RIGHTS GRANTED COMPETING MVPDS

The Commission seeks comment on whether its decision not to preempt state mandatory access statutes effectively means that non-cable MVPDs are barred from enforcing exclusive agreements in those states. U S WEST believes that the Commission's perception is accurate. Mandatory access statutes basically provide customers with a choice of video programming providers. In some states, mandatory access applies to all MVPDs, in others, only to the incumbent cable operator. In either case, the ultimate outcome of a state mandatory access statute is the availability of choice for video programming consumers. This is especially true for tenants located in MDUs who would otherwise be forced to accept the provider chosen by their landlord.

Mandatory access laws are the only vehicle which provide true service provider choice to customers residing in MDUs. Without such laws, MDU property managers and landlords are effectively the gatekeepers for their tenants' access to video programming service providers (as well as other telecommunications service providers). The Commission may believe that the landlord will act in the best interests of his or her tenants, but reality has shown otherwise. If the Commission acts to preempt such access statutes without establishing a federal right-of-access rule, it will effectively remove the small amount of control individual MDU tenants

now enjoy in selecting their own service providers. Preempting such control where available would be not one, but two giant steps backward in the development of a competitive landscape and provision of real choice for MDU tenants. The states should be allowed to continue to set and enforce state specific mandatory access requirements.

IV. THE COMMISSION SHOULD "GRANDFATHER" EXISTING PERPETUAL AGREEMENTS THAT AUTOMATICALLY RENEW WITH THE UNDERLYING CABLE FRANCHISE

The Commission requests comment on whether it should take any action with regard to contracts that run for the term of the franchise agreement, including renewals. U S WEST believes that such action is unnecessary and unwarranted. Here again, the Commission should avoid interfering with private contractual agreements, especially those which are already in place. Any assumptions about the conditions which existed at the time the contracts were entered are likely to be arbitrary at best. A number of these agreements exist for the convenience of MDU owners who have no interest in periodically negotiating new agreements. They simply want their property to be served. The Commission should not force these owners to renegotiate their service agreements when they have no interest in doing so. To the extent that the Commission wants to provide alternative access to video programming providers, it should implement right-of-access, rather than impinge upon private contractual rights.

A "fresh look" is not appropriate for existing MDU service agreements under any circumstances. There is no demonstrated need for such action in the

voluminous record of this proceeding.<sup>6</sup> While a limited number of parties have raised an issue associated with the existence of so-called “perpetual” service agreements, no party has alleged that such agreements are keeping them out of the MDU video programming marketplace. In fact, it is U S WEST’s experience that there are very few agreements with automatic renewal clauses in existence. The Commission should refrain from taking actions in circumstances where no actual need has been demonstrated.

V. THE COMMISSION’S CABLE HOME WIRING RULES  
MUST APPLY TO MVPDS EQUALLY

The Commission seeks comment on its proposal to apply its cable home wiring rules to all MVPDs. U S WEST believes that this is the only competitively fair and equitable solution. There is no reason to support disparate treatment amongst MVPDs. Especially in the MDU marketplace, where competition among video programming providers is already widespread. Any other approach would only serve to create regulatory disparity which will in turn create false economies in the marketplace. All MVPDs should be treated the same for purposes of the Commission’s inside wiring rules.

Equal treatment would include the uniform application of any rules adopted as a result of this SFNPRM. Alternative providers already have financial and other

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<sup>6</sup> Moreover, it would be patently unfair to require incumbent operators to immediately abrogate existing contractual arrangements upon which they have relied for business planning purposes. If the Commission believes that such action is absolutely necessary and lawful, it should, at a minimum, postpone the application of any such action to allow operators sufficient time to adequately plan for and manage the ensuing consequences.

advantages over incumbent operators due to the fact that: 1) they do not have to provide service across entire franchise areas; 2) they do not have franchise obligations, e.g., public education and government ("PEG") access, institutional network ("INET") support; and 3) they are not required to pay franchise fees. There is simply no reason to allow alternative providers to enter into contractual arrangements that are foreclosed to incumbent operators because of their non-franchised status.

VI. THE SHARING OF HOMERUN WIRING AMONGST MVPDS IS NEITHER DESIRABLE NOR TECHNICALLY FEASIBLE AT THIS TIME

DIRECTV has suggested that the Commission establish a procedure in its rules which would allow the sharing of homerun wiring within MDUs.<sup>7</sup> Such a procedure, if technically possible, might solve some of the problems alleged by alternative video programming providers. It would, however, potentially cause a whole host of other issues. U S WEST does not believe that the proposal submitted by DIRECTV is desirable or technically feasible at this time. Additionally, although alternative providers have claimed the contrary, U S WEST does not believe that there is a widespread reluctance on the part of MDU owners to implement a two-wire solution in their buildings.

Homerun wire sharing proceeds from the premise that a two-wire solution is not possible in most MDUs. U S WEST has not experienced this opposition from MDU owners. The technology does not currently exist to make sharing feasible amongst various video programming providers. There is no equipment on the

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<sup>7</sup> See SFNPRM ¶ 148.



market today which would allow the simultaneous use of a single piece of coax for multiple provider distribution. And, while such technology may exist at some time in the future, sharing raises many complex regulatory issues which make the implementation of sharing difficult if not impossible. For example, what regulatory authority would have the jurisdiction to implement a solution to potential interference issues that is fair to all parties? What would happen in the case of more than two providers wishing to share a single piece of coaxial cable? Would service have to be diminished equally to ensure equal access by all providers or would it be first-come first-serve on the available bandwidth? All of these questions and many more would have to be answered by the Commission before it could implement a sharing solution which is not needed. The Commission should reject the proposal of DIRECTV or table it until such time as it merits additional consideration.

**VII. U S WEST SUPPORTS THE EXEMPTION OF SMALL OPERATORS FROM THE COMMISSION'S SIGNAL LEAKAGE REPORTING REQUIREMENTS**

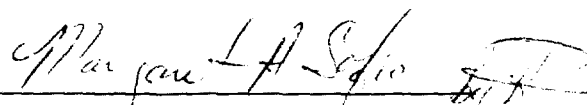
U S WEST supports the Commission's proposal to eliminate the signal leakage reporting requirements for small cable operators. Specifically, the Commission has proposed exempting small operators from the specific requirement to report signal leakage testing on an annual basis. U S WEST believes that a reduction of regulatory requirements is justified in this case and urges the Commission to make additional efforts to reduce the regulatory burdens on all MVPDs where possible.

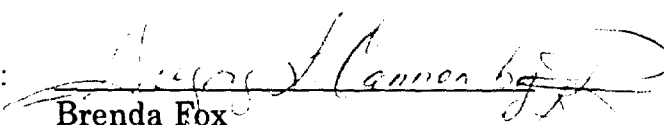
# VIII. CONCLUSION

Based on the foregoing, the Commission should refrain from imposing artificial restrictions on the private contractual rights of MDU owners and MVPDs. Additionally, the Commission must ensure the equal regulatory treatment of all MVPDs and not skew the already competitive MDU marketplace. And finally, the Commission should encourage two-wire competition by rejecting the technically infeasible proposal of DIRECTV for the sharing of homerun wiring.

Respectfully submitted,

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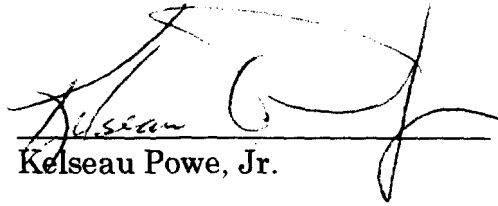
Of Counsel,  
Dan L. Poole

December 23, 1997

Its Attorneys

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 23<sup>rd</sup> day of December, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via hand-delivery, upon the persons listed on the attached service list.



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